

COLE & VAN NOTE
ATTORNEYS AT LAW
555 12TH STREET, SUITE 2100
OAKLAND, CA 94607
TEL: (510) 891-9800

1 Scott Edward Cole, Esq. (S.B. #160744)
Laura Grace Van Note, Esq. (S.B. #310160)
2 **COLE & VAN NOTE**
555 12th Street, Suite 2100
3 Oakland, California 94607
Telephone: (510) 891-9800
4 Facsimile: (510) 891-7030
Email: sec@colevannote.com
5 Email: lvn@colevannote.com
Web: www.colevannote.com
6

7 Attorneys for Representative Plaintiff
8
9

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **OAKLAND DIVISION**

13 JAMI ZUCCHERO, individually and on
14 behalf of all others similarly situated,
15 Plaintiff,
16 v.
17 HEIRLOOM ROSES, INC.,
18 Defendant.

Case No. 4:22-cv-00068-KAW

CLASS ACTION

UPDATED CLASS NOTICE

Date: November 16, 2023
Time: 1:30 P.M.
Judge: Hon. Kandis A. Westmore

NOTICE OF CLASS ACTION SETTLEMENT

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

Jami Zuccherro v. Heirloom Roses, Inc., Case No. 4:22-cv-00068-KAW

To: All individuals identified by Heirloom Roses, Inc. (“Heirloom”) and to whom Heirloom sent notice on or about December 16, 2021, that their information may have been impacted in the Data Security Incident, defined below.

A proposed settlement has been reached in a class action lawsuit titled *Jami Zuccherro v. Heirloom Roses, Inc.*, Case No. 4:22-cv-00068-KAW (Northern District of California). The lawsuit asserts claims against Defendant Heirloom related to a security incident that occurred between February and October of 2021 and about which Heirloom notified potentially impacted individuals in December 2021 (the “Data Security Incident”). Defendant denies all of the claims and denies it did anything wrong.

The settlement offers payments to individuals in the United States (a) whose personal identifying information was stored, possessed or controlled by Heirloom and (b) who were affected by the Heirloom Data Security Incident that occurred between approximately February to October of 2021 (“Settlement Class Members”). The amounts paid will depend upon how many people submit valid claims but initially are set at the following amounts:

A Reimbursement Award of up to **\$200**, as explained below.

If you are a Settlement Class Member, your options are:

SUBMIT A CLAIM FORM DEADLINE: [REDACTED]	You must submit a valid claim form to receive a payment from this Settlement.
DO NOTHING	You will receive no payment and will no longer be able to sue Defendant over the claims resolved in the settlement.
EXCLUDE YOURSELF DEADLINE: [REDACTED]	You may exclude yourself from this settlement and keep your right to sue separately. If you exclude yourself, you receive no payment. Exclusion instructions are provided in this Notice.
OBJECT DEADLINE: [REDACTED]	If you do not exclude yourself, you may write to the Court to comment on or detail why you do not like the settlement by following the instructions in this Notice. The Court may reject your objection. You must still file a claim if you desire any monetary relief under the settlement.

The Court must give final approval to the settlement before it takes effect but has not yet done so. No payments will be made until after the court gives final approval and any appeals are resolved.

Please review this Notice carefully. You can learn more about the settlement by visiting **www.[REDACTED].com** or by calling **1-800-XXX-XXXX**.

Further Information about this Notice and the Lawsuit

1. Why was this Notice issued?

Settlement Class Members are eligible to receive payment from a proposed settlement of the Lawsuit. The court overseeing the Lawsuit pending in the Northern District of California authorized this Notice to advise Settlement Class Members about the proposed settlement that will affect their legal rights. This Notice explains certain legal rights and options Settlement Class Members have in connection with the settlement.

2. What is the Lawsuit about?

The lawsuit is a proposed class action lawsuit brought on behalf of certain Heirloom customers whose information may have been accessed and exfiltrated by unauthorized individuals as part of the Data Security Incident. The affected information may include names and payment card information.

The Lawsuit claims Heirloom is legally responsible for the Data Security Incident and asserts legal claims, including negligence and breach of contract. Heirloom denies these claims and denies it did anything wrong.

3. Why is the Lawsuit a class action?

In a class action, one or more representative plaintiffs bring a lawsuit on behalf of others who have similar claims. Together, all of these people are the “Class” and each individually is a “Class Member.” There is one Representative Plaintiff in this case: Jami Zuccherro. The class in this case is referred to in this Notice as the “Settlement Class.”

4. Why is there a settlement?

The Representative Plaintiff in the Lawsuit, through her attorneys, investigated the facts and law relating to the issues in the Lawsuit. Representative Plaintiff and Class Counsel believe the settlement is fair, reasonable and adequate and will provide substantial benefits to the Settlement Class. The Court has not decided whether the Representative Plaintiff’s claims or Heirloom’s defenses have any merit, and it will not do so if the proposed settlement is approved. By agreeing to settle, both sides avoid the cost and risk of a trial and people who submit valid claims will receive compensation. The settlement does not mean that Heirloom did anything wrong, or that the Representative Plaintiff and the Class would or would not win their case if it went to trial.

Terms of the Proposed Settlement

5. Who is in the Settlement Class?

The Settlement Class is defined by the Court as all individuals within the United States (1) whose personal identifying information was stored, possessed or controlled by Heirloom and (2) who were affected by the Heirloom Data Security Incident that occurred between approximately February and October of 2021. Excluded from the Settlement Class is any judge presiding over the Litigation and any members of their first-degree relatives, judicial staff and/or persons who timely and validly request exclusion from the Settlement Class.

6. *What are the terms of the settlement?*

The proposed settlement would create a Settlement Fund that would be used to pay all payments to Settlement Class Members who submit valid claims. Defendant will also pay (a) the costs of administration and notice (approximately \$[REDACTED]), (b) any attorneys' fees and costs awarded by the Court to Class Counsel (up to \$198,500) as well as litigation costs and expenses and (c) any service award to the Representative Plaintiff awarded by the Court (up to \$1,500). The settlement also releases all claims or potential claims of Settlement Class Members against Defendant arising from or related to the Data Security Incident, as detailed in the Class Settlement Agreement and Release.

7. *What claims are Settlement Class Members giving up under the settlement?*

Settlement Class Members who do not validly exclude themselves from the settlement will be bound by the Class Settlement Agreement and Release and any Final Judgment entered by the Court and will give up their right to sue Defendant for the claims being resolved by the settlement, including all claims or potential claims of Settlement Class Members against Defendant arising from or related to the Data Security Incident. The claims that Settlement Class Members are releasing are described in Section 1.29 of the Class Settlement Agreement and Release and the persons and entities being released from those claims are described in Section 1.30 of the Class Settlement Agreement and Release. Section 8 of the Class Settlement Agreement and Release explains when such releases will occur.

Payments to Settlement Class Members

8. *What kind of payments can Settlement Class Members receive?*

Settlement Class Members who submit valid claims and any required documentation may receive a Reimbursement Award to compensate them for lost time and out-of-pocket expenses, up to maximum of \$200 per Settlement Class Member.

9. *What is a Reimbursement Award?*

Settlement Class Members who, at any time from February 1, 2021 to [ENTER CLAIMS DEADLINE], experienced unauthorized or fraudulent charges, other out of pocket losses or lost time that are fairly traceable to the Data Security Incident are eligible to receive a Reimbursement Award of up to \$200 as reimbursement for those charges and expenses. The following types of expenses may be claimed:

- payment card fees or bank fees, including card reissuance fees, overdraft fees, charges related to unavailability of funds, late fees, over-limit fees and fees relating to an account being frozen or otherwise unavailable due to the Data Security Incident;
- cell, internet or text charges;
- costs or charges for obtaining credit reports, credit freezes or credit monitoring or identity theft protection services;
- postage costs; and

- Lost time at \$20 per hour up to two hours for a total of \$40.

You cannot recover for emotional distress. Claimants must exhaust all available credit monitoring insurance and identity theft insurance before seeking a Reimbursement Award. Settlement Class Members seeking a Reimbursement Award must provide the information and documents required on the Claim Form.

10. What happens after all claims are processed and there are funds remaining?

If there are any funds remaining after all valid claims are processed and the time to cash any payment checks has passed, those funds shall be distributed as directed by the Court, including potential distribution to a charitable organization. No remaining funds will be returned to Heirloom.

Your Options as a Settlement Class Member

11. If I am a Settlement Class Member, what options do I have?

If you are a Settlement Class Member, you do not have to do anything to remain in the settlement. **However, if you wish to seek an award under the settlement, you must complete and submit a Claim Form postmarked or submitted online at www._____.com by [INSERT DATE].**

If you do not want to give up your right to sue Defendant about the Data Security Incident or the issues raised in this case, **you must exclude yourself (or “opt out”) from the Settlement Class.** See Question 15 below for instructions on how to exclude yourself.

If you wish to object to the settlement, you must remain a Settlement Class Member (*i.e.*, you may not also exclude yourself from the Settlement Class by opting out) and submit a written objection. See Question 18 below for instructions on how to submit an objection.

12. What happens if I do nothing?

If you do nothing, you will get no award from this settlement. Unless you exclude yourself, after the settlement is granted final approval and the judgment becomes final, you will be bound by the judgment and you will never be able to start a lawsuit, continue with a lawsuit or be part of any other lawsuit against Defendant related to the claims released by the settlement.

13. How do I submit a claim?

You may complete the Claim Form online at www._____.com. You may also obtain a paper Claim Form by downloading it at www._____.com or by calling the claims administrator at [INSERT TOLL-FREE NUMBER]. If you choose to complete a paper Claim Form, you may either submit the completed and signed Claim Form and any supporting materials electronically at www._____.com or mail them to: [INSERT CLAIMS MAILING ADDRESS].

14. *Who decides my settlement claim and how do they do it?*

The Claims Administrator will decide whether a Claim Form is complete and valid and includes all required documentation. The Claims Administrator may require additional information from any claimant. Failure to timely provide all required information will invalidate a claim and it will not be paid.

15. *How do I exclude myself from the settlement?*

To opt out of the settlement you must make a signed, written request that (a) says you wish to exclude yourself from the Settlement Class in this Lawsuit and (b) includes your name, address and phone number. You must submit your request through the settlement website (www.settlement.com) or mail your request to this address:

[INSERT REQUEST FOR EXCLUSION MAILING ADDRESS]

Your request must be submitted online or postmarked by **[INSERT DATE]**.

16. *If I exclude myself, can I receive any payment from this settlement?*

No. If you exclude yourself, you will not be entitled to any award. However, you will also not be bound by any judgment in this Lawsuit.

17. *If I do not exclude myself, can I sue Defendant for the Data Security Incident later?*

No. Unless you exclude yourself, you give up any right to sue Heirloom for the claims that this settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form requesting a payment.

18. *How do I object to the settlement?*

All Settlement Class Members who do not request exclusion from the Settlement Class have the right to object to the settlement or any part of it. You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed settlement must be in writing and it and any supporting papers must be mailed to the Clerk of the Court, Settlement Class Counsel and Heirloom's Counsel, at the mailing addresses listed below. Your objection must be filed or postmarked no later than the objection deadline, **[INSERT OBJECTION DEADLINE]**:

Court	Heirloom's Counsel
Office of the Clerk U.S. District Court for the Northern District of California Ronald V. Dellums Federal Building & United States Courthouse 1301 Clay Street, Suite 400 S Oakland, California 94612	Spencer Persson Jean M. Fundakowski DAVIS WRIGHT TREMAINE LLP 865 S. Figueroa Street Los Angeles, California 90017

Settlement Class Counsel
<p>Scott Edward Cole COLE & VAN NOTE 555 12th Street, Suite 2100 Oakland, California 94607</p>

To be considered by the Court, your objection must list the name of the Lawsuit: *Jami Zuccherro v. Heirloom Roses, Inc., Case No. 4:22-cv-00068-KAW* (Northern District of California) and include all of the following information: (a) your full name, address, telephone number and e-mail address (if any), (b) information identifying you as a Settlement Class Member, including proof that you are a member of the Settlement Class (such as the notice you received from Heirloom or the notice of this settlement), (c) a statement as to whether your objection applies only to yourself, to a specific subset of the Settlement Class or to the entire class, (d) a clear and detailed written statement of the specific legal and factual bases for each and every objection, accompanied by any legal support for the objection you believe is applicable, (e) the identity of any counsel representing you, (f) a statement whether you intend to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying that counsel, (g) a list of all persons who will be called to testify at the Final Approval Hearing in support of your objections and any documents to be presented or considered and (h) your signature and the signature of your duly authorized attorney or other duly authorized representative (if any).

If you submit a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

Court Approval of the Settlement

19. *How, when and where will the Court decide whether to approve the settlement?*

The Court will hold a Final Approval Hearing to decide whether to approve the settlement. That hearing is scheduled for , 202 at a.m./p.m. at the Oakland Courthouse, 1301 Clay Street Oakland, California 94612, before Judge Kandis A. Westmore. Judge Westmore will continue to hold hearings by Zoom or teleconference until further notice. Please visit Judge Westmore's page at <https://www.cand.uscourts.gov/judges/westmore-kandis-a-kaw/> for current information regarding courthouse access and court hearings. At the Final Approval Hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are timely objections, the Court will consider them and will listen to people who have properly requested to speak at the hearing. The Court may also consider Settlement Class Counsel's request for attorneys' fees and costs and the request for the service award for the Representative Plaintiff. After the hearing, the Court will decide whether to approve the settlement.

It is possible the Court could reschedule the hearing to a different date or time without notice, so it is a good idea before the hearing to check www.cand.uscourts.gov or access the Court docket

in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov/cgi-bin/ShowIndex.pl> to confirm the schedule if you wish to attend.

20. *Do I have to attend the hearing?*

No. You do not need to attend the hearing unless you object to the settlement and wish to appear in person. It is not necessary to appear in person in order to make an objection; the Court will consider any written objections properly submitted according to the instructions in Question 18. You or your own lawyer are welcome to attend the hearing at your expense but are not required to do so.

21. *What happens if the Court approves the settlement?*

If the Court approves the settlement and no appeal is taken, the Settlement Fund will be fully funded. The Claims Administrator will pay any attorneys' fees and costs award and Representative Plaintiff's service award. Then, within the later of 30 days after the Effective Date or 30 days after all disputed claims have been resolved, the Claims Administrator will send settlement payments to Settlement Class Members who submitted timely and valid Settlement Claims.

If any appeal is taken, it is possible the settlement could be disapproved on appeal.

22. *What happens if the Court does not approve the settlement?*

If the Court does not approve the settlement, there will be no settlement payments to Settlement Class Members, Settlement Class Counsel or the Representative Plaintiff and the case will proceed as if no settlement had been attempted.

Lawyers for the Settlement Class and Defendant

23. *Who represents the Settlement Class?*

The Court has appointed the following Class Counsel to represent the Settlement Class in this Lawsuit:

Scott Edward Cole
COLE & VAN NOTE
555 12th Street, Suite 2100
Oakland, California 94607
(510) 891-9800

Settlement Class Members will not be charged for the services of Settlement Class Counsel. However, you may hire your own attorney at your own cost to advise you in this matter or represent you in making an objection or appearing at the Final Approval Hearing.

24. *How will the lawyers for the Settlement Class be paid?*

Settlement Class Counsel will request the Court's approval of an award for attorneys' fees and costs up to \$198,500. Any award for attorneys' fees and costs shall be paid separately from the

Settlement Fund. Settlement Class Counsel will also request approval of a Service Award of \$1,500 to Representative Plaintiff which shall also be paid separately from the Settlement Fund.

25. *Who represents Defendant in the Lawsuit?*

Defendant is represented by the following lawyers:

Spencer Persson
Jean M. Fundakowski
DAVIS WRIGHT TREMAINE LLP
865 S. Figueroa Street
Los Angeles, California 90017

For Further Information

26. *What if I want further information or have questions?*

This Notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the Class Settlement Agreement and Release available at www._____.com, by contacting Settlement Class Counsel at the phone number provided in response to Question 23 above, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov/cgi-bin/ShowIndex.pl> or by visiting the Office of the Clerk, U.S. District Court for the Northern District of California, at the Ronald V. Dellums Federal Building & United States Courthouse at 1301 Clay Street, Suite 400 S, Oakland, California 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

CPT Group will act as the Claims Administrator for the settlement. You can contact the Claims Administrator at:

[INSERT CONTACT INFO FOR CLAIMS ADMINISTRATOR]

Please do not contact the Court.